

(2025) 09 BOM CK 0322

In the Bombay High Court, Aurangabad Bench

Case No : Writ Petition No. 2843 Of 2022

Dipika Rahul Wadile alias, Dipika Sunil Dhole

APPELLANT

Vs

Eklavya Shikshan Prasarak Mandal, Bhilaipada, Tq. & Dist.
Nandurbar. (Notice be served upon the Secretary)

RESPONDENT

Date of Decision : 30-09-2025

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5(2), 5(3), 9

Citation : (2025) 09 BOM CK 0322

Hon'ble Judges : Abasaheb D. Shinde, J

Bench : Single Bench

Advocate : S.R. Sapkal, A.B. Jagtap, P.S. Patil

Final Decision : Allowed

Judgement

Abasaheb D. Shinde, J

1. Rule. Rule made returnable forthwith. With consent of parties, heard finally at the admission stage.

2. By this writ petition, the petitioner is taking an exception to the judgment and order dated 14.01.2022 passed by the Presiding Officer, School Tribunal, Nashik in Appeal No.95 of 2016, by which the appeal filed by the petitioner under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('Act of 1977' for short) has been dismissed challenging the termination order thereby terminating the services of the petitioner to the post of Shikshan Sevak.

3. Few facts giving rise to filing the writ petition can be summarized as follows :

The petitioner claims that she possesses the qualification of H.S.C., D.Ed., and belongs to N.T. Category. The petitioner also claims that due to retirement of one Smt. Ushabai More, respondent nos.1 and 2 management have sent the letter on 14.08.2012 to the respondent no.3/Education Officer seeking permission to fill

up the said vacant post. It is further case of the petitioner that the said letter dated 14.08.2012 was not responded by the respondent no.3/Education Officer either accepting or rejecting the same. The petitioner further contends that as no decision was taken by the Education Officer on the letter dated 14.08.2012 addressed by respondent nos.1 and 2 management, the management was left with no other option but to issue an advertisement in daily newspaper "Khandesh Gaurav" on 03.10.2012 thereby calling upon the candidates to undergo the selection process.

4. It is further contention of the petitioner that pursuant to the said advertisement, the petitioner have accordingly applied and have undergone the selection process and amongst other candidates, he was found eligible and suitable and thus, respondent nos.1 and 2 have appointed the petitioner to the post of Shikshan Sevak for a period of three years on probation. The petitioner further contends that she accordingly joined in the respondent no.2/school on 15.10.2012 and have also completed the probation period on 14.10.2015 and by virtue of completion of probation period, the petitioner have even attended the status of permanent teacher. The petitioner further contends that despite the petitioner having completed the probation period, the proposal seeking approval to her appointment was not forwarded by respondent nos.1 and 2 and the same was submitted belatedly. On the said proposal for grant of approval, the respondent no.3/Education Officer communicated the management vide communication dated 07.09.2016 that the appointment of the petitioner is of the year 2012; however, the proposal seeking approval to her service have been forwarded in the year 2016. Moreover, while the process of absorbing the surplus teacher was in process still respondent nos.1 and 2 have submitted the proposal for grant of approval of the petitioner therefore asked for an explanation about the same and returned the proposal back to the respondent nos.1 and 2. Therefore, relying on the said communication of respondent no.3/Education Officer dated 07.09.2016, respondent nos.1 and 2 have issued the termination order on 12.09.2016, thereby terminating the services of the petitioner as Shikshan Sevak.

5. The petitioner further contends that the petitioner accordingly preferred an appeal under Section 9 of the Act of 1977 before the School Tribunal at Nashik, thereby challenging the said termination order inter alia contending that the appointment of the petitioner is after following the due procedure of law. So also, the petitioner is duly qualified for being appointed as Shikshan Sevak and it is only because of the lapse on the part of the management that proposal seeking approval to her appointment was submitted belatedly. So also, merely because the respondent no.3/Education Officer have returned the proposal for grant of approval back to respondent nos.1 and 2 management, that her services as Shikshan Sevak have been terminated by termination order dated 12.09.2016, which is contrary to the provisions of law and thus, prayed for setting aside the said termination order. It is further contended by the petitioner that respondent nos.1 and 2 management have filed its say to the said appeal and in para 4 of

the say filed by respondent nos.1 and 2 before the School Tribunal, the only stand taken by respondent nos.1 and 2 is that it is on account of the letter issued by the respondent no.3/Education Officer thereby refusing to grant approval

that the termination order has been issued. The petitioner further contends that the respondent no.3/Education Officer have also filed his say before the School Tribunal and have tried to supplement the reasons in the say by contending that before seeking permission to fill up the vacant post on account of the retired employees, certain directions have been issued for obtaining no objection and as the appointment of the petitioner is from N.T. Category, respondent nos.1 and 2 seems to have not adhered to the roster.

6. The petitioner further contends that the School Tribunal, Nashik, after hearing the parties, by the impugned order dated 14.01.2022 dismissed the appeal filed by the petitioner by observing that the petitioner have failed to discharge the burden that the appointment of the petitioner is after following the due procedure of law. So also, the School Tribunal have observed that in absence of no objection for filling up the post on which the petitioner was appointed, it cannot be said that the appointment of the petitioner is after following regular process of selection. The School Tribunal have also further observed that since the Education Officer have refused to grant approval to the appointment of the petitioner on the ground that no prior permission before appointing the petitioner was obtained, therefore, it cannot be said that the appointment of the petitioner is after following the due procedure of law and thus by dismissing the appeal filed by the petitioner, respondent nos.1 and 2 have been directed to pay six months salary to the petitioner by way of compensation.

7. I have heard learned counsel for the petitioner, learned counsel for respondent nos.1, 2 and 4 and learned counsel for respondent no.3. The only point which needs to be considered in this writ petition is, whether the services of the petitioner could have been terminated on the sole ground of rejection or non-grant of approval by the Education Officer.

8. Learned counsel for the petitioner would submit that the petitioner has been appointed by following the due procedure of law and selection process adopted by respondent nos.1, 2 and 4. The appointment of the petitioner cannot be said to be illegal or invalid for want of approval, as the submission of proposal for grant of approval is a matter between the management and Education Officer and the grant of approval is only for the purpose of release of salary and nothing else. Learned counsel for the petitioner would also submit that the grounds of termination of petitioner's services is not on account of the ground as enumerated in sub-section 3 of Section 5 of the Act of 1977 nor on account of any other ground, save and except, on the ground that the Education Officer have refused to grant approval to the appointment of the petitioner and therefore, the services of the petitioner could not have been terminated. The learned School Tribunal have failed to appreciate the said aspect. Learned counsel for the petitioner would also place reliance on the judgment of this Court

in the case of *Namdeo Sukdeo Saptale Vs. Chairman, Kai Ramchandra Patil Shikshan Sanstha, Kunikonur and Others* 2016 (3) All M.R. 828, as well as *Shri Hiraji Natthurao Bangare Vs. Dyan Prasarak Shikshan Mandal and Ors* 2019 (3) All M.R. 47, to contend that the services of the petitioner cannot be terminated on the ground that the Education Officer have not approved the appointment of the petitioner and there is no provision in the Act of 1977 for termination of services of a teacher on the ground that approval is not granted by the Education Officer.

9. Learned counsel for respondent no.3/Education Officer on the other hand invites attention of this Court to the reply filed by the Education Officer before the School Tribunal and more particularly para 3 of the reply and would submit that, as the post on which the petitioner was appointed had fallen vacant due to the retirement of one of the teacher, certain directions were issued for absorption of surplus teachers and therefore, the permission could not be granted for filling up the said post so also as the petitioner belongs to N.T. Category, in the roster, the said post seems to be not available. Therefore, he prayed that the order passed by the School Tribunal is legal and proper.

10. It is pertinent to note that the management have sent a letter seeking permission to fill up the post on account of retirement of one Smt. Usha More vide letter dated 14.08.2012 to the respondent no.3/Education Officer. However, the respondent no.3/Education Officer have neither rejected the said permission nor taken any decision whatsoever and it is not the case of the Education Officer either before the School Tribunal or before this Court that any decision has been taken on the said letter dated 14.08.2012 sent by respondent nos.1, 2 and 4 seeking prior permission to fill up the post on which the petitioner has been appointed. On the contrary, it is only when the proposal seeking approval to the appointment of the petitioner was sent to the respondent no.3/Education Officer on 15.10.2012 that the respondent no.3/Education Officer have issued a communication dated 07.09.2016 thereby refusing to grant approval and till then, he has not taken any decision on the permission sought by the management and therefore, the management was left with no other alternative but to advertise the post and appoint the petitioner pursuant to the said advertisement. The Education Officer now cannot take a stand as sought to be taken before the School Tribunal as well as before this Court when the order refusing to grant approval is not on any of the ground as sought to be raised in its reply for the first time. Therefore, it cannot be said that the appointment of the petitioner is de hors the provisions of Section 5 sub-section (2) of the Act of 1977.

11. From the submissions advanced by the learned counsel for the petitioner, learned counsel for respondent nos.1, 2 and 4 and learned counsel for respondent no.3/Education Officer, the only issue that needs to be considered in this writ petition is, whether the services of the petitioner can be terminated on account of non-grant of approval to the appointment of the petitioner by the

Education Officer. In the judgment of Namdeo Sukdeo Saptale (supra), this Court in para 13 of the said judgment have observed that the only ground for termination of services of the petitioner in that case was that the Education Officer had not approved the appointment of the petitioner. This Court have also further observed that there is no provision in the Act of 1977 for termination of services of the teacher on the ground that approval is not granted by the Education Officer and thus in the said case, this Court have held that services of the petitioner could not have been terminated on that ground. This Court in the said judgment have also considered the submissions of the State that approval could not be granted by the Education Officer, since the management had not obtained prior approval of the Education Officer before issuance of any advertisement, however the said contention has been turned down by this Court as the same could not have been agitated for the first time, as the said was not the ground while refusing to grant approval to the appointment of the said petitioner and thus, this Court in the case of Namdeo Sukdeo Saptale (Supra) have set aside the order passed by the School Tribunal as well as set aside the termination order issued by the management by directing the Education Officer to grant approval to the appointment of the petitioner.

12. Similarly, in the case of Shri Hiraji Natthurao Bangare (supra), this Court have observed that the management cannot terminate the services of petitioner merely on the ground that the Education Officer have refused to grant approval. However, in the said case of Shri Hiraji Natthurao Bangare (supra), the petitioner and the management have submitted the compromise pursis by which the petitioner was treated as in continuous service and notwithstanding the rejection of approval or the fate of approval, the management was held responsible for paying regular salary to the petitioner.

13. Thus, from the view taken by this Court in the case of Namdeo Sukdeo Saptale (supra) and Shri Hiraji Natthurao Bangare (supra), I am of the considered view that the termination order dated 12.09.2016 issued by respondent nos.1, 2 and 4 on the ground of non-grant of approval by the respondent no.3/Education Officer is unsustainable and thus, is liable to be quashed and set aside. Similarly, the impugned judgment and order dated 14.01.2022 passed by the School Tribunal, Nashik in Appeal No.95 of 2016 filed by the petitioner also deserves to be quashed and aside. I, therefore, pass the following order :

ORDER

(i) Writ Petition is allowed.

(ii) The termination order dated 12.09.2016 issued by the respondent nos.1, 2 and 4 on the ground of non-grant of approval by Respondent No.3/Education Officer is hereby quashed and set aside.

(iii) Similarly, the impugned judgment and order dated 14.01.2022 passed by the learned School Tribunal, Nashik in Appeal No.95 of 2016 filed by the petitioner is

quashed and set aside.

(iv) The respondent nos.1, 2 and 4 are directed to reinstate the petitioner in service with further direction to the respondent nos.1, 2 and 4 to submit a proposal for grant of approval to the service of petitioner.

(v) It is further directed that the Respondent No.3/Education Officer shall decide the said proposal for grant of approval to the service of petitioner within a period of eight weeks from the date on which the respondent nos.1, 2 and 4 submits the proposal after reinstatement of the petitioner.

(vi) The Respondent No.3/Education Officer shall not reject the proposal for grant of approval on the ground on which it was rejected earlier by communication dated 07.09.2016.

(vii) With these directions, writ petition is disposed of.

(viii) Rule is made absolute in aforesaid terms.